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VIRLYNN TINNELL
SUPERIOR COURT CLERK

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MOHAVE**

9 STATE OF ARIZONA,

10 Plaintiff,

11 vs.

12 JUSTIN JAMES RECTOR,

13 Defendant.

No. CR-2014-1193

**RESPONSE TO DEFENDANT'S
MOTION TO COMPEL LAW
ENFORCEMENT GATHER,
PRESERVE AND TENDER ALL
EVIDENTIARY ITEMS AND ALL
CASE INFORMATION TO THE
PROSECUTOR'S OFFICE**

14 COMES NOW, the State of Arizona, by the Mohave County Attorney and through
15 the undersigned deputy, Gregory A. McPhillips, respectfully requests the court deny
16 defendant's motion to compel law enforcement gather, preserve and tender all
17 evidentiary items and all case information to the prosecutor's office.

- 18 **1. Defendant's request to compel law enforcement to give all case information**
19 **to the prosecutor's office 1) gives no additional protection to defendant, 2)**
20 **gives no guidance to the court as to how to govern compliance, and 3)**
21 **creates an undue burden on the law enforcement agencies.**

22 Defendant requests a court order to compel but provides no guidance to the court,
23 or notice to the State, as to 1) what agencies are subject to the court order, 2) what would
24 trigger a violation of the court order, or 3) what would be the sanction for violating the
25 order. Defendant does not give clear parameters for the court order as to what evidence
shall be encompassed by the order. Defendant's list of evidence controlled by the court
order begins, "*including but not limited to items like*" and ends "*[a]ny other information*
generated by law enforcement regarding the investigation of the case." If such an order is



1 granted, then law enforcement agencies, such as the Bullhead City Police Department
2 (BHCPD), will not possess a specific list of items that the court order governs. Yet, a
3 failure, of the BHCPD, to provide to the prosecutor an inconsequential item could lead to
4 the sanction of dismissal of charges. Such a result would be silly. Courts work best when
5 they make rulings based on facts determined in court, here defendant wants a "blanket
6 order" based on no facts at all.

7 Defendant's request to compel law enforcement to give all case information to the
8 prosecutor's office 1) gives no additional protection to defendant, 2) gives no guidance to
9 the court as to how to govern compliance, and 3) creates an undue burden on the law
10 enforcement agencies. The court should deny defendant's motion to compel law
11 enforcement gather, preserve and tender all evidentiary items and all case information to
12 the prosecutor's office.

13 **2. Rule 15 and case-law does not provide for a prophylactic order compelling
14 law enforcement to tender all evidence to the prosecutor.**

15 The State is aware of the rules requiring disclosure. Arizona Rules of Criminal
16 Procedure, Rule 15.1(a) requires the prosecutor to disclose to defendant. Rule 15.1(b),
17 obligates the prosecutor to a continuing duty to disclose to defendant. Case-law holds
18 that a prosecutor has a duty to learn of evidence known to police¹ and that knowledge of
19 the police will be imputed to the prosecutor.² Brady requires the prosecutor to disclose
20 exculpatory evidence. These rules and case-law do not mandate what law enforcement
21 agencies do—they mandate what the prosecutor does.

22 The State strives to promptly disclose in all cases. In this case, the State has
23 disclosed 1110 pages, over 60 witnesses and over 50 computer discs. Much of the
24 information defendant wants given to the prosecutor has already been disclosed to
25 defendant. Detective Grasse, of the Bullhead City Police Department (BHCPD), is the
case officer. Undersigned prosecutor has met with Detective Grasse on several

¹ *Kyles v. Whitley*, 514 U.S. 419 (1995).

² *Youngblood v. West Virginia*, 547 U.S. 867; *Giglio v. United States*, 405 U.S. 150 (1972).

1 occasions to make certain undersigned prosecutor possesses all the disclosure known to
2 the Bullhead City Police Department and other agencies. In this case, the State has
3 disclosed reports from the BHCPD, FBI, MCSO, DCS and Office of the Mohave County
4 Medical Examiner. Undersigned prosecutor intends to learn of all evidence known to the
5 investigating agencies.

6 Rule 15 and the above foot-noted case law provides for a legal path for items
7 possessed by police agencies to be disclosed to defendant. Defendant provides no basis
8 in law for the court to issue a prophylactic order compelling law enforcement to tender all
9 evidence to the prosecutor. Further, such a prophylactic order would not serve to protect
10 defendant more than does Rule 15 and case-law.

11 **3. Case-law discusses when court orders for disclosure should be granted.**

12 Defendant's instant motion is not asking for any single item of evidence to be
13 disclosed! The law does not allow the court to issue disclosure orders based on vague
14 requests. If the court were to issue a disclosure order, then the court would need to be
15 able to articulate who they are ordering, to disclose, and what they are ordering be
disclosed in such a manner that agencies can understand and comply.

16 Case law mandates, that to warrant a court order of disclosure pursuant to
17 discovery, defendant must show both substantial need for the requested information and
18 that he is unable without undue hardship to obtain the substantial equivalent by other
19 means; and trial court may consider if compliance with discovery order would be
20 unreasonable or oppressive.³ Exercise of judicial discretion to grant discovery in criminal
21 proceeding is circumscribed by reasonableness of the discovery request, since mere
22 "fishing expeditions" are not to be countenanced.⁴

23 In this case, Defendant did not provide the court with a substantial need for an item
24 of evidence the defendant needs but cannot obtain without undue hardship to obtain the
25 substantial equivalent by other means. At the very least, defendant would need to show

³ *State v. Tankersley*, 191 Ariz. 359, 956 P.2d (1998).

⁴ *State v. Salcido*, 109 Ariz. 380, 509 P.2d 1027 (1973).
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1 some articulable suspicion that the BHCPD was not disclosing an item of evidence to the
2 prosecutor in this case. Defendant has not done that. Defendant is requesting a
3 prophylactic order based on a vague and unspecified concern.

4 Such micromanagement, by the Court, of the relationship between law
5 enforcement agencies and the prosecutor is untenable. For example, if the court took
6 over the duty of the prosecutor, and managed what evidence is disclosed by police, then
7 would the prosecution be immunized from sanction if law enforcement followed the four
8 corners of the court order but some disclosure was not made?

9 The court should deny defendant's request to compel law enforcement gather,
10 preserve and tender all evidentiary items and all case information to the prosecutor's
11 office.

12 **4. The prosecutor should not possess evidence**

13 To the degree that defendant's motion states that "law enforcement gather,
14 preserve and tender *all* evidentiary items and all case information to the prosecutor's
15 office; that will not be done. The police possess evidence lockers and procedures to
16 maintain evidence; the prosecutor does not. Complying with this order could put the
17 State in a position where evidence was not properly maintained. The police will retain all
18 evidence.

19 To the degree that the prosecutor has obtained copies of evidence, then those
20 copies have been disclosed to the defense.

21 Defendant's motion is poorly worded. It is possible that defendant did not intend
22 that law enforcement tender all evidentiary items to the prosecutor's office.

23 Unfortunately, a poorly worded motion will lead to a poorly worded order—an order that
24 would be adverse to the best practices of evidence retention.

1 The court should deny defendant's request to compel law enforcement gather,
2 preserve and tender all evidentiary items and all case information to the prosecutor's
3 office.

4 **5. Not all defendant's requests, under the prophylactic order are subject to**
5 **disclosure under Rule 15.1.**

6 Defendant wants the court to order disclosure, to the prosecutor, of items that the
7 prosecutor normally does not review. Defendant wants the investigative agencies to turn
8 over "[a]ll emails sent between Detectives and other officers investigating this case," and
9 "[a]ll travel information related to this investigation." Rule 15.1 does not require disclosure
10 of officer e-mails or travel information. Defendant has not shown a substantial need for
11 officer e-mails or travel information. Further, compiling this information would be a burden
12 on the law enforcement agency.

13 ***Conclusion***

14 On balance, defendant's request to compel law enforcement to give all case
15 information to the prosecutor's office 1) gives no additional protection to defendant, 2)
16 gives no guidance to the court as to how to govern compliance, and 3) creates an undue
17 burden on the law enforcement agencies. Granting defendant's request would be
18 ill-advised. The court should deny defendant's motion to compel law enforcement gather,
19 preserve and tender all evidentiary items and all case information to the prosecutor's
20 office.

21 RESPECTFULLY SUBMITTED THIS 19TH DAY OF MARCH, 2015.

22 MOHAVE COUNTY ATTORNEY
23 MATTHEW J. SMITH

24 By 
25 DEPUTY COUNTY ATTORNEY
GREGORY A. MCPHILLIPS

1
2 A copy of the foregoing
3 sent this same day to:

4 HONORABLE LEE F. JANTZEN
5 SUPERIOR COURT JUDGE

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14 By GMP